its headlights, check its speed or take proper care not to encroach on the wrong side of the road. There was a heavy mist on the road which affected visibility. After reviewing the evidence the learned president came to the conclusion that his action was rash, having complete disregard for the safety to the people in the motor car. He accepted the evidence of the prosecution witnesses. I do not find any material on which this court can say that he was wrong or that he misdirected himself on the facts. I am also satisfied that the evidence justified the conclusion he had arrived at. I am therefore not disposed to interfere with his finding of guilt under section 34A of the Road Traffic Ordinance. The appeal against conviction is dismissed.

I now come to the question of sentence. The learned president correctly appreciated that the offence was serious and he did reflect this degree of seriousness in the sentence he imposed. It is not in doubt that the right measure of punishment for an offence is a matter in which no hard and fast rules can be laid down and it is to be determined by a consideration of a variety of circumstances. In assessing sentence, the primary consideration is the character and magnitude of the offence, but the court cannot lose sight of the proportion which must be maintained between the offence and the penalty and the extenuating circumstances which might exist in the case. The only consideration which can be urged for reduction of sentence is that it is manifestly excessive, all other factors are irrelevant. The extenuating circumstances put forward on behalf of the appellant was that the 5 year period of disqualification might deprive him of his means of livelihood. That in my view is not an extenuating circumstance. No special grounds have been advanced so as to justify any reduction in the period of disqualification. In my view the learned president had properly directed himself with regard to sentence. The appeal against sentence is also dismissed.

Appeal dismissed.

Solicitors: *Kam Woon Wah & Co.*

KHO AH SOON v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong Hock Sim J.) August 16, 1969]

[Penang — Criminal Appeal No. 13 of 1969]

Criminal Law and Procedure — Charge — Possession of false car registration card — Omission of words "intent to deceive" — Whether fatal — No failure of justice — Criminal Procedure Code (Cap. 21), ss. 162 and 448.

Criminal Law and Procedure — Sentence — Sentence increased on appeal.

Road Traffic — Registration card — Possession of false registration card — Charge — Omission of words "intent to deceive" in charge — Whether fatal — Road Traffic Ordinance, 1958, s. 137(3).

This was an appeal against the conviction of the appellant on a charge for an offence under section 137 of the Road Traffic Ordinance, 1958. The charge on which he was convicted was as follows: "That you on the 6th day of December, 1968 at about 11.15 a.m. at Jalan Lunas, in the District of Bukit Mertajam, in the State of Penang, did have in your possession a document, to wit a Motor Vehicle registration card purporting to be pertaining to car number PG. 9565, so closely resembling the original registration card of the above mentioned car as to be calculated to deceive and that you have thereby committed an offence under section 137(3)(b) of the Road Traffic Ordinance No. 48 of 1958 and punishable under section 137(3) of the said Ordinance."

The appellant was found guilty and sentenced to pay a fine of $250 in default 3 months imprisonment. The main ground of appeal was that the words "with intent to deceive" were omitted from the charge.

Held, dismissing the appeal: (1) the omission of the words "with intent to deceive" did not cause any failure of justice and therefore the conviction would be upheld;

(2) the sentence imposed in this case was inadequate and should be increased to a term of imprisonment for 6 months.

Cases referred to:—

(1) *R.* v. *Greenberg* [1942] 2 All E.R. 344.

(2) *Public Prosecutor* v. *Leong Yoon Meow* [1953] M.L.J. xxxv.

(3) *R.* v. *McVitie* (1960), 44 Cr. App. R. 201; [1960] 2 Q.B. 483; [1960] 3 W.L.R. 99; [1960] 2 All E.R. 498.

(4) *R.* v. *Thomson* (1913), 9 Cr. App. R. 252 at p. 260; [1914] 2 K.B. 99 at p. 105.

MAGISTRATE'S CRIMINAL APPEAL.

Tan Phock Kin for the appellant.

Abu Mansor bin Ali (Deputy Public Prosecutor) for the respondent.

Ong Hock Sim J. (delivering oral judgment):- The appellant was charged in the Magistrate's Court at Bukit Mertajam and convicted on the 29th May, 1969 on the charge as follows:—

"That you on the 6th day of December, 1968 at about 11.15 a.m. at Jalan Lunas, in the District of Bukit Mertajam, in the State of Penang, did have in your possession a document, to wit, a Motor Vehicle registration card purporting to be pertaining to car number PG. 9565, so closely resembling the original registration card of the above mentioned car as to be calculated to deceive and that you have thereby committed an offence under section 137(3)(b) of the Road Traffic Ordinance No. 48 of 1958 and punishable under section 137(3) of the said Ordinance."

and was sentenced to pay a fine of $250 in default 3 months' imprisonment. He appeals against the conviction.

The facts briefly are that appellant was stopped on 6th December, 1968 in a car PG. 9565 driven by one Abdullah bin Ismail (offered

to and called as DW.2) by Inspector Isma Yatim (PW.1) who testified that he searched the person of the accused and found in his left trouser pocket a registration card of a motor vehicle, bearing the number PG. 9565, produced in court as Ex. P.1. He produced also in court another registration card which he had obtained the next day from one Chin Goh Soo, a goldsmith, also in respect of a car bearing No. PG. 9565 (marked Ex. P.2). Chin Goh Soo testified that he owned car PG. 9565 but that, though he did not know why his brother had driven the car to Bukit Mertajam on the 6th December 1968, he had (presumably before then) authorised his brother to sell the car. An officer of the R.I.M.V. Office, Penang. testified and, it is not disputed, that P.2 was issued by his office, but not P.1. He said that the serial number on P.1, namely A126559, was not on record and further that the person registered as owner of P.1 was one Beh Hock Chai while P.2 was in the name of Chin Gok Soo.

At the close of the case for the prosecution, defence counsel submitted that there was not sufficient evidence that appellant had possession with intent to deceive, an important ingredient in the charge. The trial magistrate called upon appellant for his defence.

In his defence, appellant stated he was with DW.2 and one Tan Ah Yong (DW.3) in a coffee shop on the day of the incident when one Tan Ah Poh (identified) brought the car to them. DW.2 said he had a buyer and the said Ah Poh handed the ignition key to DW.2 and the car was stopped on the way to Lunas by PW.1. Appellant denies however that P.1 was in his pocket. DW.2 said he was handed the car by DW.3 but could not say if accused was searched or if anything was found on him. He expressly denied being given any bundle to put in the car. DW.3 said he had asked appellant to try to sell the car and had asked Ah Poh (DW.4 — the brother of PW.3) to bring the car to appellant. He was with appellant and DW.2 when DW.4 brought the car and claimed that he saw DW.2 put a bundle of documents wrapped in a piece of newspaper into the car pocket. DW.4 said he drove the car to Tasek Glugor where he handed the key to DW.2. He denies he handed any grant, meaning registration card, I presume. He said "I saw DW.2 put a bundle wrapped in newspaper in the car." At the end of the case the defence submitted that there was doubt whether P.1 was found on the appellant.

The trial magistrate was satisfied that P.1 was a forged document and he accepted the evidence of PW.1 that it was found in appellant's trouser pocket. He further accepted the evidence of the prosecution despite some discrepancies therein to which his attention had been drawn by counsel for the appellant. I see no reason to disagree with him and I note myself that there were many discrepancies in the evidence for the defence which inclines me to the view that it was fortunate for some witnesses that they were not charged with conspiring with the appellant to cheat the intended buyer of the car by the use of this forged registration card.

I propose now to deal with the grounds of appeal that have been lodged. Grounds (a) and (b) deal with omission of the words "intent to deceive." Section 137 of our Road Traffic Ordinance is substantially the same as section 112 of the United Kingdom Road Traffic Act, 1930 the wording of which is identical with what is set out in section 137. Section 112(1) of the Road Traffic Act, 1930 reads:—

> "If, with intent to deceive, any person —
>
> (b) makes or has in his possession any mark, plate or document so closely resembling any such mark, plate or document as aforesaid as to be calculated to deceive;
>
> he shall be guilty of a misdemeanor and ....."

I quote here from *Halsbury's* Statutes of England (2nd Edn.) Vol. 24. The notes read:—

> "With intent to deceive. It is not necessary to allege in the indictment or to prove an intent to deceive any particular person; it is sufficient to prove that the defendant did the act charged with intent to deceive."

As it was submitted by the learned counsel for the prosecution that the appellant did not know of the falsity of the document, I would read further:—

> "If it is proved that there is an intent to deceive by means of a forged document it is not necessary to prove that the person had knowledge of the forgery."

The case of *R. v. Greenberg*[1] is a case in point as to the wording of this section. It was held in this case that:—

> "Once an intent to deceive was proved, mere possession of such documents was an offence under reg. 82, and it was not necessary to prove the appellants knew they were false."

In the appeal, the *Editorial Note* in that case says:—

> "The issue of this appeal was whether the prosecution must prove that the prisoner knew the coupons to be false ones. The contention of the Crown, which was accepted by the Court of Criminal Appeal, was that it was not incumbent upon them to prove actual knowledge and that it was sufficient if it was shown that the prisoner acquired the coupons in some irregular way or disposed of them in some irregular way. Proof of knowledge is always a difficult matter and more particularly so in a time of war and, if a person is shown to have acquired or disposed of coupons in an irregular manner, the probability is that he suspected the falsity of those coupons and was dealing with them as false."

Regulation 82 of the Defence (General) Regulations reads:—

> "If, with intent to deceive, any person ..... (b) makes or has in his possession any document so closely

resembling such a document as aforesaid as to be calculated to deceive, he shall be guilty of an offence under that regulation."

It will be noted that this wording is similar to section 137(3)(b) of the Road Traffic Ordinance, 1958 and section 112(1) of the Road Traffic Act, 1930.

In *R. v. Greenberg*, Asquith J. has this to say:—

"It has been contended that the true construction of reg. 82(1)(b) is that no one can offend against it unless (i) he is aware that documents in his possession are colourable or deceptive and (ii) he has an intent to deceive some one, not only by means of the documents, but by means of their deceptive character. In relation to a document alleged to be forged, the argument takes the form that to come within the mischief of this provision the accused person must (a) possess it; (b) know that it is forged; (c) intend to deceive some one into the belief that it is genuine. I call this the 'narrow' construction of the provision. I inclined to it strongly when I first read the provision and counsel have argued very forcibly in its favour.

The question is, in my view, not easy to determine, but, on consideration, I have concluded and rule, rightly or wrongly, against this narrow construction, and in favour of a broader one. In deference to the argument presented, I think it proper to state my reasons.

I agree that on any view the intent to deceive must be an intent to deceive in respect of deceptive documents and not about something external to them. The documents must be the instrument or vehicle or subject-matter of the intent to deceive; but I do not think that the intent is limited to an intent to represent them as genuine when they are false. If this limitation had been intended, nothing would have been easier than to say so in terms; as for instance to say in reg. 82(1)(b) not 'has in his possession,' but 'knowingly has in his possession.' The Forgery Act in the section about uttering forged documents is careful to provide in terms that the utterer must not only have an intent to deceive or defraud, but knowledge that the document is forged. In the section about forging the same Act not only makes it a crime to make a false document, but goes on to say that the maker must make it 'in order that it may be used as genuine.' No such words are found in reg. 82, and the omission can hardly have been accidental."

Birkett J. in the Court of Appeal when delivering the judgment of the court has this to say on the decision of Asquith J. upon the point of law as to the construction of regulation 82:—

"With these considerations in view, and the fact that we are at war, it seems to me that in reg. 82(1)(b), Parliament is saying this. Once it is proved that there is an intent to deceive by means or in respect of a document, the mere possession of such a document shall be an offence, provided it is what I will, for short, call a deceptive document. People shall possess such documents at their peril, and the Crown shall not be put to proof that they are possessed with knowledge of their deceptive or colourable character — always a difficult matter to prove — provided the Crown can establish an intent to deceive by means of or in respect of or in relation to such a document.

This court holds that that judgment and that construction is the proper construction to be laid upon this particular regulation. It is important to say upon that part of the case that the words 'with intent to deceive' are not to be construed in any narrow sense, as deceiving any particular person. If in fact on all the evidence it can be gathered that there was an attempt to deceive anybody by means of the particular document, that, of course, would be enough. Therefore, in all the circumstances of the case, the first point of construction in our opinion, fails."

I hold therefore that in the light of the authorities which I have read, the omission of the words "with intent to deceive" in the charge is not a fatal error.

I will refer, as learned counsel did, to the judgment of Thomson J., which appears in [1953] M.L.J. page xxxv on '(Framing a Charge — Rule for Magistrates and Police Officers" in *Public Prosecutor v. Leong Yoon Meow*.[2]

"It is a very good working rule for magistrates and police officers to hold that where what an accused person is alleged to have done cannot be described in the language of any statutory provision creating an offence or where it seems necessary to depart from the language of the section in framing a charge, then the probability is that no offence has been committed."

Well, that as it says is only a good working rule. It is not exclusive. It does not rule out any other mode and the Criminal Procedure Code itself has this to say under section 162:—

"Every charge under this Code shall state the offence with which the accused is charged."

Sub-section (4) of that section says:—

"The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge."

Here the attention of the appellant had been drawn to the fact that he had been charged under a specific provision of the law, namely, section 137(3)(b) of the Road Traffic Ordinance 1958, and it is important to refer to the case of *R. v. McVitie*[3] where the appellant was charged on an indictment, count one of which charged as the statement of offence "possessing explosives, contrary to section 4(1) of the Explosive Substances Act, 1883" and the particulars of offence, omitting the word "knowingly", alleged that the appellant had in his possession an explosive substance "under such circumstances as to give rise to a reasonable suspicion that it was not in (his) possession for a lawful object". During the trial the appellant admitted that he knew the substance was in his possession and was explosive. It was held that the indictment was not, by reason of the omission of the word "knowingly", rendered bad in law in the sense of disclosing no offence known to the law, but merely defective in that it described a known offence with incomplete particulars. Section 4(1) provides as follows:—

"(1) Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made

it or had it in his possession or under his control for a lawful object, be guilty of felony, and, on conviction, shall be liable to imprisonment for a term not exceeding fourteen years, and the explosive substance shall be forfeited."

On appeal the Court of Appeal held that the indictment was in fact bad as alleged, but nevertheless applied the proviso and dismissed the appeal. In doing so the court referred to *R. v. Thompson*[4]:—

"One of the objects of section 4 was to prevent the quashing of a conviction upon a mere technicality which had caused no embarrassment or prejudice. Whilst giving the right of appeal upon any wrong decision of any question of law, the object of the legislature was that justice should be done in spite of a wrong decision, and that the court should not interfere if it came to the conclusion that, notwithstanding the wrong decision, there had been no substantial miscarriage of justice. The court must always proceed with caution when it is of opinion that a wrong view of the law has been taken by the judge presiding at the trial, but when it is apparent, and, indeed, undisputed, as it is and must be in this case, that no embarrassment or prejudice had in fact been suffered in consequence of the pleader having made the manifest error above mentioned, the court must act upon the proviso in this section of the Act."

I would therefore rely on section 448 of the Criminal Procedure Code which says:—

"448. Subject to the provisions hereinbefore contained no finding, sentence or order passed or made by a court of competent jurisdiction shall be reversed or altered on account of:—

(a) any error, omission or irregularity in the complaint, summons, warrant, charge, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code;

.....

unless such error, omission, improper admission or rejection of evidence, irregularity, want or misdirection has occasioned a failure of justice."

I cannot see any failure of justice in this case and having regard to section 448 uphold the finding of the trial magistrate despite the omission to specify the words "with intent to deceive." As I have already stated it is not necessary to specify this intent in the indictment.

Ground (4) of the appeal is also dealt with in the case of *R. v. Greenberg.*[1] In this case, as I have indicated, the inferences which the trial magistrate drew from the facts are quite justified. It is clear that the appellant was concerned in a conspiracy for the purpose of cheating the intended buyer of the car. I feel certain that PW.3 would have gone to report the loss of his car to the police and have it seized back from the purchaser who will be left to look for the seller, Beh Hock Chai. The discrepancies can clearly be found in the evidence of the defence. The appellant said:—

"On that day about 11 a.m. Dollah and I were in coffee shop at Simpang Tiga Tasek Glugor. Ah Yong was also with us. Soon after one Tan Ah Poh drove his car to that coffee shop."

DW.2 said he met the accused at Tasek Glugor. A Chinese came and delivered the car. He was Ah Yong. Ah Yong (DW.3) said:—

"On that day I was waiting in coffee shop at Tasek Glugor. I met accused and Dollah at that coffee shop. I saw Ah Poh hand the car to Dollah. The ignition key was handed to Dollah."

The trial magistrate may conclude that when PW.3 said he had authorised his brother to sell the car it is a little strange that PW.3 went on to say—,

"On 6.12.68 about 10 a.m. my older brother drove the motor car to Bukit Mertajam. I don't know the reason why he came to Bukit Mertajam."

From the possession of this false registration card for which no explanation has been given, I accept the trial magistrate's finding of fact that PW.1 found this registration card (P.1) in the pocket of the appellant, and I agree with the trial magistrate who quite rightly rejected the suggestion that this evidence was fabricated by PW.1 for the purpose of convicting the appellant. It is clear that the unknown Beh Hock Chai would have signed the purported transfer of this car, received some money and disappeared.

Far too many cars have disappeared in this part of the country and an investigation could have been made to check what sort of insurance cover this owner had, whether it covered loss by theft.

I take a serious view of offences of this sort and I am considering whether I should enhance the sentence on the appellant. The offence is punishable, on conviction, with a term not exceeding twelve months or to a fine not exceeding two thousand dollars or both such imprisonment and fine. This is an offence which has little to be said in extenuation and I consider that the only sentence for this sort of offence is a term of imprisonment. Accordingly I set aside the fine of $250 and I substitute therefor a term of imprisonment for six months.

Appeal dismissed. Sentence enhanced.

THE "HOE LEE" OWNERS OF CARGO EX "KUALA KANGSAR" v. OWNERS OF "HOE LEE"

[O.C.J. (Wee Chong Jin C.J.) September 4, 1969]

[Singapore — Admiralty Suit No. 62 of 1969]

Practice and Procedure — Admiralty suit in rem — Affidavit to lead warrant of arrest — Defective — Whether curable under R.S.C. 1934 O. LXIII — Admiralty Procedure Rules, r. 16(1)(a).